AFR

44

HIGH COURT OF CHHATTISGARH AT BILASPUR

M. A. (C) NO.231 OF 2006

APPELLANT		Fieldspares Sales and Services.
	Versus	
RESPONDENTS		Ashvini Kumar Thakur & another

FOR JUDGMENT ON 4/06/2007

Sd/-
Dhirendra Mishra
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

M. A. (C) NO.231 OF 2006

APPELLANT — Fieldspares Sales and Services, Through: The Branch Manager, 120 Mount Road, Near Saraf Chamber, Sadar, Nagpur (M.H.) Bilaspur, Lodhipara Old Sarkanda, Near Old Employment Exchange Office, Bilaspur (C.G.)

Versus

RESPONDENTS

1. Ashvini Kumar Thakur, S/o Shri Brijraj Singh Thakur, aged about 33 years, R/o Village- Chin, Post Nava, Block Mungeli, Distt. Bilaspur, At present R/o Qtr. No. E-151, Yadunandan Nagar, Tifra, Bilaspur.
2. The Commissioner, Workmen's Compensation Labour Court, Bilaspur

---

Present:

Mr. S.P. Kale, Advocate for the appellant.

JUDGMENT

(Delivered on 11/06/2007)

Dhirendra Mishra, J

1. Heard on M.C.P. No.1706/2006, an application for condonation of delay in filing this appeal, as the instant appeal has been preferred with a delay of 314 days, as per office note dated 4.9.2006.

2. Learned counsel for the appellant submitted that immediately after the award was passed certified copy of the impugned award was obtained on 29.8.2005 and the same was sent to the Head Office by Bilaspur Branch along with papers vide Annexure A-2 and thereafter, a reminder was sent on 4.1.2006 vide Annexure P-4. However, the Head Office communicated that the case file is misplaced due to

46

shifting and in the meanwhile, R.R.C. was issued on 19.6.2006. Ultimately, the case file was traced on 29.8.2006 at Nagpur and appeal was filed on 2.9.2006 after depositing the sum awarded before the court below. Affidavit in support of this application has been filed.

3. From the reasons assigned for delay in filing the instant appeal, it is evident that the appellant had not been diligent in taking steps to file the appeal, which was required to be filed within a period of 60 days.

4. Even otherwise for entertaining an appeal by an employer, the appellant has to demonstrate that a substantial question of law is involved in the appeal. The only substantial question of law agitated by learned counsel for the appellant is that the accident occurred at Wardha (MS) and the application for compensation has been filed by the workman in Bilaspur, whereas, as per Rule 3 of the Workmen's Compensation (Venue of Proceedings) Rules, 1996 (for short 'Rules, 1996') application under Section 19 or Section 22 of Workmen's Compensation Act, 1923 (for short 'the Act') is to be processed before the Commissioner for the area in which the accident took place which resulted in the injury. Therefore, the whole proceedings before the court below is vitiated for want of territorial jurisdiction.

5. It is not in dispute that the respondent-workman is the domicile of Village Cheenu, Tehsil Mungeli, District Bilaspur.

6. Rule 3 (1) of the Rules, 1996 reads as under:-

> "**3. Processing of an application.- (1)** An application under Section 19 or Section 22 shall be processed before or by a Commissioner for the area in which,
>
> a) The accident took place which resulted in the injury; or

37

b) The workmen or in case of his death the dependents claiming the compensation ordinarily reside; or

c) The employer has his registered office;

Provided that no matter shall be processed before or by a Commissioner on that the Commissioner having the jurisdiction over the area in which the accident took place without his giving notice in Form-A to the Commissioner having jurisdiction over the area and the State Government concerned."

7. Since the workman is undisputedly originally resident of District Bilaspur, therefore, the Commissioner at Bilaspur had jurisdiction to entertain the appeal.

8. The court below on the basis of disability certificate of Ex.P-19, which has been duly proved by the concerned doctor and considering that the workman was engaged as 'Sales Representative' and cannot perform his duties by remaining stationary at one place and he is required to go from one place to another has assessed the loss of earning capacity of the workman 100%. The above finding of fact is based on the evidence available on record and as such, is not perverse.

9. On the basis of the aforesaid discussion, the instant appeal cannot be entertained firstly on the ground of delay and secondly, the same does not involve any substantial question of law.

10. In the result, the appeal being devoid of any substance is liable to be dismissed and the same is dismissed at the admission stage itself.

Sd/-
Dhirendra Mishra
Judge

Roshan/-